Public Prosecutor v Tay Chuan Beng & Anor

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 3 OF 1988
COOMARASWAMY J
4 JANUARY 1989

Criminal Procedure – Sentencing – Eight years' imprisonment for culpable homicide not amounting to murder – Accused had history of mental illness – Accused still capable of knowing the nature and consequences of her act

The first and second accused were charged under s 304, read with s 34, of the Penal Code (Cap 224, 1985 Ed) for the offence of culpable homicide not amounting to murder. The facts are as follows.

The second accused was a prostitute and the deceased had approached her for sexual intercourse. After intercourse, the second accused asked him for payment. Not only did the deceased make no payment, he grabbed the second accused's bag which contained some money. Upon her resisting, the deceased punched her on the face several times. This attracted a crowd, whereupon the deceased stopped assaulting the second accused. Subsequently, the first accused was told of what had transpired and the first and second accused proceeded to where the deceased was. The first accused picked up an iron pipe along the way and attacked the deceased when they found him. The appellant participated in the attack by using her fists. The deceased died as a result of the injuries caused. During the trial, a psychiatrist's report had revealed that both the first and second accused had a history of mental illness.

The two accused pleaded guilty to the charge. The court gave the following judgment with regard to the second accused as she had intended to appeal.

Held:

(1) In assessing sentence, the court took into account the second accused's background and also the psychiatrist's report that while her schizophrenic illness constituted an abnormality of mind that impaired her mental responsibility for her action, she was capable of knowing the nature and consequences of her act.

(2) The following factors were also taken into consideration: (a) it was on the second accused's request, if not her instigation, that the first accused located and attacked the deceased with her joining in; (b) her desire was revenge for what the deceased had done to her; (c) she knew that the first accused had a dangerous weapon in the form of an iron pipe 80 cm long; (d) she was not an inactive witness but participated physically in the attack on the deceased, although only with her fists; and (e) the attack on the deceased took place about three and a half hours after the cause for her grievance against the deceased.

(3) The lapse of time in factor (e) above was sufficient for reason to resume its seat, particularly in the light of the psychiatrist's report that she was capable of knowing the nature and consequences of her act.

(4) Taking into account her background and the above factors, eight years' imprisonment is an appropriate sentence.

[*Editorial Note*: The second accused has lodged an appeal to the Court of Criminal Appeal vide Criminal Appeal No 18 of 1988.]

Legislation referred to
Penal Code (Cap 224, 1985 Ed) s 304

Lee Seiu Kin for the Public Prosecutor.
Nathan Isaac for the first accused.
Muzammil Mohd for the second accused.

Cur Adv Vult

Coomaraswamy J: Tay Chuan Beng and Esah bte Ibrahim each pleaded guilty before me, the charge against each being one under s 304 of the Penal Code read with s 34 thereof. Esah bte Ibrahim appeals against the sentence she was given.

The appellant, aged 49 years, was a vagrant and prostitute operating in the Queen Street/Johore Road area. Her co-accused, Tay Chuan Beng ('Tay'), was a regular customer of hers and they looked upon each other as boyfriend and girlfriend. The charge against the two of them read as follows:

> You, Tay Chuan Beng and Esah bte Ibrahim, are charged that on or about 11th day of March, 1987 at about 3.20 am at the park at the junction of Rochore Road and Queen Street, Singapore, and in furtherance of the common intention of you both, committed culpable homicide not amounting to murder by causing the death of one Lai Weng Leong, and you have hereby committed an offence punishable under s 304 read with s 34 of the Penal Code (Chapter 224).

Facts of the offence

The facts as stated by the prosecution and by the defence in the two respective pleas of mitigation were unchallenged. The charge arose out of the death of one Lai Weng Leong ('Lai'), a mute who was 44 years old at the time of his death.

On 10 March 1987 at about 10.30 pm, Lai, who the appellant recognized, approached her for sexual intercourse. She agreed and after the intercourse, the appellant asked for payment of $6. Lai searched his pockets but found no money. He then grabbed the appellant's bag which contained her clothes and some money. Upon her resisting, Lai punched her on the face several times. This attracted a crowd and Lai stopped beating the appellant, whereupon she fled.

She then slept on the pavement in Queen Street. About three hours later, Tay arrived and woke her up. She told him of what had transpired. She asked Tay to go and look for Lai. He went off and found him lying on a bench near the junction of Queen Street and Rochore Road. He returned to her and asked her to accompany him and the two proceeded to where Lai was. En route, Tay picked up an iron pipe 80 cm long and 2 cm in diameter.

On reaching Lai, the appellant confirmed to Tay that he was the one who had beaten her up. Tay hit Lai four times on the head as he lay sleeping on the bench. The appellant participated in the attack by using her fists. Lai died as a result of a fractured skull caused by Tay. He also had a number of lacerations and bruises.

The appellant acknowledged to the police that she wanted Tay to take revenge on Lai on her behalf for Lai's earlier treatment of her. She also admitted she knew that Tay was going to use the iron pipe to hit Lai.

Appellant's background

The appellant had a very unhappy background. She was married to someone who took her to Bangladesh where she was badly treated by her parents-in-law who virtually forced her to return to Singapore, leaving her children there.

Both the appellant and Tay had a history of mental illness. She had two spells as an in-patient at Woodbridge Hospital, one of seven weeks in 1971 and the other of six weeks in 1982. The psychiatrist's report by Dr Lim Yun Chin states:

> Her schizophrenic illness which had its onset in 1971 had relentlessly progressed to a chronic defect state characterized by impairment in her mental faculty and judgment. Her social behaviour also deteriorated. Such was her mental condition at the time of the alleged offence.
>
> However, her condition did not amount to unsoundness of mind as she was capable of knowing the nature and consequences of her act ... Her schizophrenic illness constituted an abnormality of the mind to the extent of impairing her mental responsibility for her actions.

Sentence and reasons

In assessing sentence, I took into account her background and also the psychiatrist's report that while her schizophrenic illness constituted an abnormality of mind that impaired her mental responsibility for her action, she was capable of knowing the nature and consequences of her act.

In addition, and more importantly, were these factors:

(a) it was on her request, if not her instigation, that Tay located and attacked Lai with her joining in;
(b) her desire was revenge for what Lai had done to her;
(c) she knew that Tay had a dangerous weapon in the form of an iron pipe 80 cm long;
(d) she was not an inactive witness but participated physically in the attack on Lai although only with her fists; and
(e) the attack on Lai took place about three and a half hours after the cause for her grievance against Lai.

In my view, this lapse of time was sufficient for reason to resume its seat, particularly in the light of the psychiatrist's report that she was capable of knowing the nature and consequences of her act.

Taking into account her background and the above factors, my view was that eight years' imprisonment was an appropriate sentence. I therefore sentenced her to eight years' imprisonment to commence from 14 March 1987, the date of her arrest.

Order accordingly.

Solicitors: *Nathan Isaac & Co; MPD Nair & Co.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Chan Kim Choi

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 4 OF 1986
COOMARASWAMY AND CHAN SEK KEONG JJ
29 DECEMBER 1988

Criminal Law – Murder – Whether reasonable doubt exists in prosecution's case that accused had intention to kill deceased – Whether accused had discharged his burden of proving private defence or defences under Exceptions 1, 2 and 4 to s 300 of the Penal Code – Penal Code (Cap 103, 1970 Ed), ss 96, 300, Exceptions 1, 2 & 4 to s 300

Criminal Procedure – Cautioned statement – Whether cautioned statement can be substantive evidence of the truth of its contents when admitted as part of prosecution evidence – Criminal Procedure Code (Cap 68, 1985 Ed), s 122(5) & (6)

The accused was charged with the offence of murder. The evidence adduced by the prosecution consisted of the testimonies of witnesses at the scene of the incident, medical evidence on the stab wound and the cause of death of the deceased, and a voluntary statement made by the accused under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed). At the end of the prosecution's case, defence counsel made a submission that the defence had no case to answer as the prosecution had not adduced sufficient credible evidence which if unrebutted would warrant a conviction. Counsel for the accused also relied on certain statements in the accused's cautioned statement as evidence that the accused had stabbed the deceased when he had first been assaulted by the deceased and then threatened by his gang as well. It was submitted that these statements not only created a reasonable doubt on the prosecution's case but was also sufficient to establish the general exception of private defence and exceptions 1, 2 and 4 to s 300. Counsel also contended that where a cautioned statement was adduced as part of the prosecution's case, it was admitted as substantive evidence of the truth of the facts stated therein.

Held, convicting the accused:

(1) The court did not accept counsel's submission that a cautioned statement, when admitted as part of the prosecution's evidence, was substantive evidence of the truth of all the contents therein irrespective of the character of such statements. The law makes a distinction between inculpatory (or disserving) statements and exculpatory (or self-serving) statements. Exculpatory or self-serving statements, when given in accordance with s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed), may be admitted as part of the prosecution's evidence but not as to the truth of the contents thereof. The law of England is the same as the law of Singapore in this respect.